

REMARKS

Applicant has carefully studied the Office Action of 04 November 2003 and offers the following remarks to accompany the above amendments. Applicant requests entry of the present amendments after final on the grounds that they simplify the issues before the Patent Office.

Claims 1-23 were rejected under 35 U.S.C. § 103 as being unpatentable over Snyder in view of Honda. Applicant respectfully traverses in light of the amendments presented herein. For the Patent Office to establish *prima facie* obviousness, the Patent Office must show where each and every claim element is located in the references. MPEP § 2143.03. If the Patent Office cannot show where a claim element is located, the Applicant is entitled to a patent.

Applicant herein amends claims 1, 12, and 23 to include part of the subject matter of claims 3 and 14. Claims 3 and 14 are amended to conform to the amendments to the underlying independent claims 1 and 12, respectively. Applicant further amends claims 9, 11, 20, and 22 into independent form. The scope of these claims has not changed and no new matter is introduced. Original claim 24 was an independent claim for which Applicant has already paid. Thus, the present amendment adds three new independent claims for which payment is required. Applicant herein includes a credit card payment covering the three new independent claims.

Turning now to amended claims 1, 12, and 23, the Patent Office, with respect to claims 3 and 14, indicated that Snyder teaches that the content is accessed by sending a request to a content provider and points to Snyder, col. 5, lines 16-19. Applicant respectfully traverses this assertion. Snyder, col. 5, lines 16-19 states: "In various modes of operation permitted by control station 18, different messages may be delivered in different types of vehicles for the same points of interest 16." While the passage does send different types of messages for different types of vehicles, nothing in this passage suggests that this distinction is made on the basis of a request. Further, nothing in this passage suggests there is "a request to a content provider within the locality" Since the references individually do not teach or suggest the element, the combination of references does not teach or suggest the element. Since the combination of references does not teach or suggest the element, the Patent Office has not established *prima facie* obviousness, and the claims are allowable over the rejection of record.

Claims 2-8 and 10 and claims 13-19 and 21 depend from allowable claims 1 and 12 and thus are also in a condition for allowance.

Claims 9 and 20 have been rewritten in independent form. The Patent Office, in its analysis of claims 9 and 20, pointed to Honda, col. 9, lines 61-63 for the step of accessing a profile and criteria within the profile being used to identify the type of content to access. Honda, col. 9, lines 61-63 states "while repeating the exchange of the information, the information will be received by a user who has interest in the special sale information." Nothing in this passage indicates that there is a profile as recited in the claim. Further, there is nothing in this passage that indicates that content is accessed from the content providers "based on criteria within the profile such that the criteria further identified a type of content to access . . ." as recited in the claim. What this passage states is that by spreading the word through the automatic information transfer (analogized to a word-of-mouth communication), the information will eventually reach someone who is interested in the sale. However, this is still not a teaching or suggestion of a profile. Nothing in Snyder teaches or suggests the recited profile and its use. Since the references individually do not teach or suggest the recited claim element, the references in combination cannot teach or suggest the recited claim element. Since the combination of references does not teach or suggest the claim element, the Patent Office has not established *prima facie* obviousness with respect to the claims and, Applicant is entitled to a patent.

Claims 11 and 22 have been rewritten in independent form. The Patent Office, in its analysis of claims 11 and 22, points to Honda, col. 1, lines 40-46 as teaching the zone of acceptance around the mobile terminal and further stating that "the subscriber's location based on GPS and the subscriber's location inherently includes a zone of acceptance around the mobile terminal" Applicant traverses this assertion. For the Patent Office to maintain that something is inherent, the element must *necessarily* be present for the reference to operate. MPEP § 2112. Honda, col. 1, lines 40-46 recites:

the mobile object CR1 collects data as to the present position and time from the GPS (Global Positioning System) apparatus GP1 during its running, and based on the data the running locus (course of travel) until the present time, the average speed, the elapsed time, the degree of traffic congestion and the like on the course are stored in the memory MM1 as traffic information message MS1.

Nothing in this passage *necessarily* requires a zone of acceptance. The presence or absence of a position detector 25 does not necessitate a zone of acceptance. Further, no one of ordinary skill in the art would interpret a mere position detector as a "zone of acceptance" as that term is used herein (see specification, page 9, lines 5-20). At best, the position detector would provide a

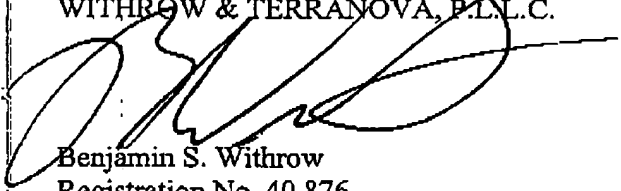
positional point, which is not within any reasonable definition of the term "zone." Nor would it be possible to determine if a point overlaps any portion of the locality as recited in the claim. In an event, the position detector of the reference does not teach or suggest "defining a zone of acceptance around the mobile terminal and . . . determining if the zone of acceptance overlaps any portion of the locality." To this extent, the references do not show the claim element. Since the references individually do not show the claim element, the combination of references cannot teach or suggest the claim element. Since the claim element is not taught or suggested by the combination of references, the Patent Office has not established *prima facie* obviousness and the claims are in a condition for allowance.

Applicant requests reconsideration of the rejection in light of the amendments and remarks presented herein. Specifically, the combination of references does not teach or suggest all the claim elements and thus the claims are allowable. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By


Benjamin S. Withrow
Registration No. 40,876
P.O. Box 1287
Cary, NC 27512
Telephone: (919) 654-4520

Date: December 19, 2003
Attorney Docket: 7000-075

CERTIFICATE OF TRANSMISSION	
I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW TO:	
Examiner: <u>Ly, Nghi H.</u> Art Unit: <u>2686</u> Fax: <u>703-872-9306</u>	
<u>Kelly Farrow</u>	Name of Sender
<u>[Signature]</u>	Signature
<u>12/19/03</u>	Date of Transmission